

REMARKS / DISCUSSION OF ISSUES

Claims 2-7 are pending in the application.

The Office action rejects claims 2-3 under 35 U.S.C. 101. The applicant respectfully traverses this rejection.

Claim 2 is amended to tie the claimed method to the statutory category of a machine. Accordingly, the applicant respectfully maintains that the rejection of claims 2-3 should be withdrawn.

The Office action rejects claims 2-7 under 35 U.S.C. 101. The applicant respectfully traverses this rejection.

The Office action asserts that because the specification states that the invention can be performed in software, the claimed invention is a software embodiment. The applicant respectfully disagrees with this assertion. The Office action fails to provide support for the implied assertion that all claims that may include software are unpatentable under 35 U.S.C. 101. Such an assertion is contrary to MPEP 2106:

"USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim."

The applicant notes that, as compared to a computer program listing, an executable computer program is a sequence of machine instructions ("machine code") that is executable by a processor.

Claims 2-3 claim a method for controlling transcoding channels that is executed by a machine, and is statutory under 35 U.S.C. 101 regardless of whether the method is executed by the machine as a series of machine instructions executed by a processor.

Claim 4 claims a controller for controlling a set of transcoders. The applicant respectfully maintains that an item that effects control of physical objects is a machine, and is statutory under 35 U.S.C. 101, regardless of whether this controlling machine uses machine instructions executed by a processor.

Claim 5 claims a data multiplexing system that includes a set of transcoders, a controller, and a data multiplexer, and, as such, constitutes a machine. This data multiplexing machine is statutory under 35 U.S.C. 101, regardless of whether that machine uses machine instructions executed by a processor.

Claims 6-7 claim a computer-readable medium that contains a computer program that performs a function of controlling the bit rate allocated to transcoding channels. MPEP 2106 states:

"a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035."

Because claims 2-7 each claims statutory subject matter, the applicant respectfully maintains that these claims are patentable under 35 U.S.C. 101 regardless of whether they include a series of machine instructions (an executable computer program) that is executed by a processor.

In view of the foregoing, the applicant respectfully requests that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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